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OFFICE OF PETITIONS

In re Application of	:	
Seltzer, et al.	:	
Application No. 10/826,139	:	DECISION ON PETITION
Filed: 15 April, 2004	:	
Attorney Docket No.: 50037.242US01	:	

This is a decision on the petition filed on 11 August, 2005, under 37 C.F.R. §1.47(a).

The petition is **GRANTED**.

NOTE: **Contrary to the statement of Counsel in the 14 March, 2005, correspondence to the non-signing inventor Ann Seltzer, the inclusion of the copy of entire application (description, claims, abstract and drawings) was and is not for the “convenience” of the non-signing inventor, but, rather, is a requirement of law. (See: MPEP §409.03(d).) As one registered to practice before the Office, Counsel is aware that this requirement of law exists, *inter alia*, because by way of executing an oath/declaration an inventor makes legal claim to the invention and commits to diligence and candor in his/her communications with the Office—whether directly or through Counsel.**

BACKGROUND AND ANALYSIS

The record reflects that:

- the instant application was received and given a filing date of 15 April, 2004, without, *inter alia*, a fully executed oath/declaration;
- the Office mailed a Notice of Missing Parts on 28 June, 2004;
- on 17 December, 2004, Petitioner Timothy P. Sullivan (Reg. No. 47,981) filed, *inter alia*, a copy of an oath/declaration signed by name co-inventors Dirickson, Tokumi and Franco, but without the signature of non-signing inventor Ann Seltzer (Ms. Seltzer), stated a "last known address" for her, and made a statement that he tried to reach Ms. Seltzer by telephone, without success; however, Petitioner has made no showing of a due diligence effort to locate a current address for the non-signing inventor, or of having mailed a copy of the entire application (description, claims, drawings) to the non-signing inventor in an effort to contact her and/or obtain a current forwarding address for her, and for that reason the original petition was dismissed on 11 February, 2005;
- by way of the instant petition filed on 11 August, 2005, Petitioner seeks to cure and appears to have cured these deficiencies.

Lastly, Petitioner has submitted a declaration in compliance with 37 C.F.R. §1.63 and §1.64 and Petitioner has shown that such action is necessary to prevent irreparable damage.

This application and papers have been reviewed and found in compliance with 37 C.F.R. §1.47(a).


This application hereby is **ACCORDED status under 37 C.F.R. §1.47(a).**

As provided under 37 C.F.R. §1.47(a), the Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition.

Notice of the filing of this application also will be published in the Official Gazette.

This file is released to the OIPE for further processing before being forwarded for substantive examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions